IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1336 OF 2019

Sanjay Purushhotam Desai ...Appellant
vs.
The State of Maharashtra ...Respondent

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Mr. Ashokkumar Dubey i/b. Savj Law Solutions, Advocate for the Appellant.
Mr. S.R. Agarkar, APP for the Respondent – State.

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CORAM : S. M. MODAK, J.
DATE : 30th NOVEMBER 2023

<u>P. C.</u> :-

1. Heard learned Advocate for the Appellant/ Accused No.2, Learned APP for the Respondent – State.

2. The present Appellant is charge-sheeted by the Economic Office Wing, Mumbai for the offences punishable under Sections 406, 420, 120-B of the Indian Penal Code and under Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act 1999.

3. It is on the basis of the criminal law set in motion by one investor by the name Vivek Kothari, resident of Mumbai. The sum and substance of the allegation is that he has invested the amount with Ace Agro Products Ltd. which is having its registered office at Kandivali (E), Mumbai. They are doing agricultural business in various places in Raigad

District and they are investors who have invested the amount in the land and assured them of good returns.

4. The present Appellant is also tried by the Court of III Additional Sessions Judge, Thane in Special Case No.4 of 2000 and along with others was acquitted after trial on 6th October 2005.

5. On this background, he moved the Special Court seized of present charge sheet and prayed for discharge on the ground of violation of the provisions of Section 300 of Code of Criminal Procedure, 1973 and Article 20(2) of the Constitution of India. The prayer was rejected as per order dated 11th April 2018. The correctness is challenged before this Court. It is true that some of the co-accused have also filed Criminal Appeal No.359 of 2016 and Criminal Appeal No.293 of 2017 before this Court, as stay is operating against them. That is why, it seems that my learned predecessor has asked the office as to why the matter is assigned to learned Single Judge. Office endorsed that the Appeal pertains to Single Judge. In so far as the Appeals pending before the Division Bench, it is for the prosecution to pursue those Appeals.

6. Learned Advocate for the Appellant read over the observations of the trial Court at Thane and observations of the Special Judge in the present matter. He also read over the provisions of law. He relied upon the observations in case of ***T.P. Gopalakrishnan vs. State of Kerala***[1].

7. It is true that Code of Criminal Procedure as well as Constitution

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gives a protection to the accused person from being prosecuted and tried again. If we read the provisions of Article 20(2) of the Constitution of India, it reads thus :-

> "*No person shall be prosecuted and punished for the same offense more than once.*"

8. So there is a bar on the prosecution as well as punishment. Main ingredient is for the same offence. Whereas, Section 300 of the Code also gives protection. The emphasis is that he must be tried by the Court of competent jurisdiction and either there is conviction or acquittal and it must be in force then protection will be available. Section 300 is couched in wide sense. So to say even it gives protection to a person from prosecution even of different offences but on the same facts. The illustration says that if a person is tried for culpable homicide and convicted, he cannot be tried for the offence of murder on the same set of facts. So the question is offence tried by the Thane Court and offence for which he is prosecuted before the Mumbai Court whether are the same offences. When charge framed by the Thane Court is perused it is for the offences under sections 420 and 406 of IPC and under section 3 of MPID Act. Whereas, Economic Offence Wing have also filed charge sheet for the same offence and in addition to that, there is offence under section 4 of the MPID Act. The Hon'ble Supreme Court in the case of ***T.P. Gopalakrishnan*** as referred above, has dealt with the ingredients of

Article 20. There are three ingredients, they are as follows :-

(i) There must be a previous proceedings before the Court of competent jurisdiction;

(ii) Conviction or acquittal must be in force;

(iii) Subsequent proceeding must be fresh proceeding wherein prosecution initiated on same set of facts.

9. In paragraph 28, what is the meaning of "same offence" is discussed. It means <u>the act where the offences are not distinct and the ingredients of the offences are identical.</u>

10. Now, in this case, if you see the allegations in both the cases, one may find that the allegation is more or less similar i.e. to say investors are duped by inducing them to invest in land and they were not returned of the amount. It is true that criminal law can be set in motion by one person.

11. There is a procedure for registration of offence when complaint is lodged by one person. There may be witnesses but first informant is one. For their grievance even though there may be a separate offence but there is no procedure of registering separate FIR for every complaint. Subsequent victims are considered as witnesses and their statements are recorded as per the provisions of Section 161 of Cr.P.C. When the judgment of the Thane Court is perused, we may find that there are 8 witnesses who are victims. It is true that the aggrieved persons whose statements are recorded by EOW are not the witnesses before the Thane Court. It is also true that Thane Court has also referred about the property seized in respect of which the case is pending before the Mumbai Court. That reference is their in paragraph No.4. However, in paragraph 19, there is also observation "it is not made clear by the Investigating Officer whether the property was attached by the Crime Branch, Mumbai." So even though offence in both these cases are same, the transactions are not same i.e. to say the witnesses whose statements are recorded by EOW, Mumbai are having different transactions though it may be of same nature. Merely because the offences are same it is not sufficient as observed by the Hon'ble Supreme Court, the transaction must also be the same.

12. In case before the Supreme court in earlier three cases, the Appellant was acquitted and subsequent two cases he was convicted for the offence under the Prevention of Corruption Act. In the earlier case, the period of audit was 1st April 1992 to 31st December 1994. Whereas, in subsequent two cases, the duration of the offence is from 27th April 1992 upto 25th August 1992 and 1st March 1993 to 12th April 1994. So, the duration of subsequent two offences was also covered during the earlier audit period. It seems that that is why the Hon'ble Supreme Court has set aside the conviction.

13. Here I am not agreeable to the submissions of the learned Advocate for the Appellant. It is for the reason that not only the witnesses in these two cases are different but the transactions with the Company are different though of similar nature. So I find no merit in the Appeal. In fact, this situation could have been avoided either by the Investigating Officer by having co-ordination with the other agency or the Appellant could also have pointed out that two prosecutions are pending. Be that as it may, there is no alternative for the Appellant to face the trial of the Mumbai Court. These are my *prima facie* observations.

14. Let trial court to decide the case as per its own merit.

15. With these observations, the Appeal is dismissed.

[S. M. MODAK, J.]